

UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION

GREGORY PARR,

Plaintiff,

File No. 1:07-CV-278

v.

HON. ROBERT HOLMES BELL

THOMAS PHILLIPS, et al.,

Defendants.

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**ORDER ADOPTING  
MAGISTRATE JUDGE'S REPORT AND RECOMMENDATION**

On April 24, 2007, United States Magistrate Judge Joseph G. Scoville issued a report and recommendation ("R&R") recommending that Plaintiff Gregory Parr's § 1983 complaint be dismissed pursuant to 28 U.S.C. § 1915(e)(2), 28 U.S.C. § 1915A(b), and 42 U.S.C. § 1997e(c) for failure to state a claim on which relief can be granted. According to the Magistrate Judge, Plaintiff's complaint that he had been exposed to Environmental Tobacco Smoke ("ETS") for two months after his transfer to the Pugsley Correctional Facility failed to state a claim under either the Eighth Amendment or the Equal Protection Clause. Plaintiff filed objections to the report and recommendation on May 7, 2007.

Pursuant to Rule 72(b) of the Federal Rules of Civil Procedure this Court is required to make a *de novo* review upon the record of those portions of the magistrate's disposition to which specific written objection has been made.

Plaintiff contends that his allegations that all six prisoners in his cube smoked, that

the ventilation system was inadequate and merely re-circulated smoke-filled air, and that it posed an unreasonable risk of serious damage to his future health, are sufficient to meet the objective component of his Eighth Amendment claim. Upon *de novo* review the Court agrees with the Magistrate Judge that Plaintiff's allegation of a two-month exposure to smoke, where there is no allegation of any medical condition that was aggravated by such exposure, and where Defendants transferred Plaintiff to a non-smoking housing unit within days of Plaintiff's grievance, are not sufficient to meet either the objective or the subjective component of an Eighth Amendment claim.

Plaintiff contends that his allegations are also sufficient to state an Equal Protection claim because he was victimized on the basis of his race. The Court has scoured the complaint and finds no allegations that Plaintiff was treated unfairly because of his race.

The Court is satisfied that the R&R accurately recites the facts and correctly applies pertinent law. Accordingly,

**IT IS HEREBY ORDERED** that Plaintiff's objections to the Report and Recommendation of the Magistrate Judge (Docket # 5) are **DENIED**.

**IT IS FURTHER ORDERED** that the Report and Recommendation of the Magistrate Judge (Docket # 4) is **APPROVED** and **ADOPTED** as the opinion of the Court.

**IT IS FURTHER ORDERED** that Plaintiff's complaint is **DISMISSED** for failure to state a claim pursuant to 28 U.S.C. §§ 1915(e)(2), 1915A; 42 U.S.C. § 1997e(c).

**IT IS FURTHER ORDERED** that this dismissal shall count as a **STRIKE** for

purposes of 28 U.S.C. § 1915(g).

**IT IS FURTHER ORDERED** that the Court finds no good-faith basis for appeal within the meaning of 28 U.S.C. § 1915(a)(3).

Date: July 17, 2007

/s/ Robert Holmes Bell

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ROBERT HOLMES BELL  
CHIEF UNITED STATES DISTRICT JUDGE